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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT STEPHEN ZUNIGA,

Defendant and Appellant.

D070587

(Super. Ct. No. SCS284869)

APPEAL from a judgment of the Superior Court of San Diego County, Dwayne K. Moring, Judge. Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, for Plaintiff and Respondent.

Robert Stephen Zuniga pleaded guilty to possession of a weapon, a metal "billy club" and admitted he suffered a prior conviction for assault with a deadly weapon that qualified as a strike under the "Three Strikes" Law (Pen. Code,<sup>1</sup> §§ 245, subd. (a)(1);

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<sup>1</sup> Statutory references are to the Penal Code.

667, subds. (b)-(i); 1170.12). After unsuccessfully moving to relieve his counsel and withdraw his guilty plea, Zuniga filed a notice of appeal and his appointed counsel filed a brief summarizing the proceedings but urging no grounds for reversal (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

The San Diego County District Attorney charged Zuniga in a second amended felony criminal complaint with assault with a deadly weapon (§ 245, subd. (a)(1); count 1), possession of a 15-inch metal rod billy (§ 22210; count 2), and attempted criminal threat (§§ 664, 422; count 3). The information alleged that Zuniga had suffered a 2015 prior strike conviction for assault with a deadly weapon.

In April 2016, Zuniga pleaded guilty to the count 2 possession charge and admitted the prior strike conviction. At his plea hearing, he stated he had initialed and signed the change of plea form, he read over most of the form and his attorney had gone over the whole form with him, he understood everything his attorney had gone over with him, and he had enough time to spend with his counsel on it. Zuniga stated he understood he was pleading guilty to count 2 and admitting his 2015 prior strike conviction; that in exchange, all counts and allegations would be dismissed and he was stipulating to a four-year state prison sentence. Zuniga stated that he had received no other promises or threats to make him sign the plea agreement. He stated he understood he had constitutional rights (1) to a speedy and public jury trial where he could see and hear witnesses that would testify against him; (2) to have his attorney ask them questions; (3) to remain silent during the trial; (4) to present his own defense to the case; and (5) to

use the court's subpoena power to order witnesses to come to court to testify for him at no charge to him. Zuniga agreed to give up those rights to plead guilty. The court advised Zuniga that his maximum sentence would be six years in state prison with a \$10,000 fine and three years on parole or post-release community supervision and that there were other consequences of pleading guilty including that he could be deported and denied naturalization, he would not be able to possess firearms or ammunition, he would have to provide a DNA sample, the charge could be used to increase punishment on any future case, he would serve 80 percent of his prison time, and he could lose any right to public assistance. The court took Zuniga's guilty plea and admission, finding he had understood his constitutional rights and voluntarily and intelligently waived them. It found his plea was freely and voluntarily made, that Zuniga understood the nature of his charges and the consequences of his plea, and that there was a factual basis for the plea. It granted the People's motion to dismiss the balance of the charges with a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754 [conduct underlying dismissed charges cannot be considered to impose an aggravated sentence absent a waiver])). On the change of plea form, defense counsel concurred to Zuniga's guilty plea and his waiver of constitutional rights. The court granted the People's motion to dismiss case No. SCS284734 as part of the plea bargain, and formally revoked probation in case Nos. SCS271918 and SCS280598.

Before Zuniga's sentencing, he moved under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) to withdraw his plea and relieve his attorney. During the hearing, his counsel reiterated that Zuniga sought to withdraw his plea, but explained he did not see a

legal basis for the motion and would not be filing it. The court denied the motion. It observed Zuniga had pleaded guilty to count 2 for a stipulated four-year sentence with a wrap for his two probation violation cases. It denied Zuniga probation and sentenced him to four years (double the two-year midterm) on count 2, ordered various credits as well as fines and fees, and sentenced him to concurrent terms on the two probation violation cases.

Zuniga filed a notice of appeal challenging the validity of his plea and obtained a certificate of probable cause from the trial court.

### DISCUSSION

Zuniga's appellate counsel has filed a brief, pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), setting forth a statement of the case, urging no grounds for reversal of the judgment, and asking this court independently to review the record for error. Pursuant to *Anders*, counsel identifies the following issues to assist the court in its search of the record for error:

(1) Whether Zuniga was properly advised of the consequences of pleading guilty and his constitutional rights, and whether he waived his constitutional rights before he pleaded guilty;

(2) Whether there was a legal basis for Zuniga to withdraw his plea, and whether his counsel rendered ineffective assistance by declining to file a motion to withdraw Zuniga's plea;

(3) Whether the trial court properly denied Zuniga's *Marsden* motion.

After receiving the opening brief from appellate counsel, we informed Zuniga he could file a supplemental brief. He did so, stating there was a possibility his arresting officer failed to read him his rights under *Miranda v. Arizona* (1966) 384 U.S. 436, and asking this court to review footage from the officer's camera or any audio recording to show whether the officer "was hunting for a reason to arrest" him, which would "possibly [be] a civil rights violation." Zuniga claims he is serving a four-year sentence "for essentially walking down the street."

We have reviewed the record consistent with the requirements of *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738; considered the issues listed by appellate counsel and identified by Zuniga; and found no reasonably arguable grounds to reverse or to modify the judgment. Appointed counsel has represented Zuniga competently on this appeal.

#### DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.